IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 453 OF 1996.

The State of Maharashtra. ... Appellant.

V/s.

Sunil Keshav Pednekar. ... Respondent.

A.S.Shitole, A.P.P. for the appellant-State.

P.N.Karlekar for the respondent.

CORAM : V.G.PALSHIKAR AND V.C.DAGA, JJ.

DATED : 7th June 2005.

JUDGMENT : (Per V.C.Daga, J.)

. This appeal has been preferred by the State of Maharashtra against the judgment and order dated 25th March, 1996 passed by the Assistant Sessions Judge at Sindhudurg, Sawantwadi in Sessions Case No.19 of 1995. By the impugned judgment and order, the respondent-accused has been acquitted of the offence punishable under section 307 of the Indian Penal Code ("I.P.C." for short).

The Facts :
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2. The case of the prosecution is that the complainant - Sanjay Keluskar having contracted marriage with Sanjivani, the daughter of Maruti Vishnu Mhaskar of the same village (living with his

mother Indira and grandmother Draupadi) developed some animosity with the accused - Sunil Pednekar living in the same locality in which the complainant resides.

3. The prosecution case further is that on 7th April, 1994 at about 3.30 p.m., the complainant was proceeding towards the residence of one Rumade via house of the accused - Sunil. He abused him which resulted in hot exchange of words and abuses between them During the course of heated conversation and exchange of abuses; accused-Sunil took out knife like sword and gave blow on the left hand of Sanjay. Consequently, left hand of Sanjay got cut and suspended at his wrist. Sanjay, then raised hue and cry; which attracted number of persons on the spot.

4. It is also the case of the prosecution that mother of the victim-Sanjay and sister Vandana hearing heated exchange of words and abuses reached the spot of offence and in their presence Sanjay was attacked by the accused-Sunil. That Sangeeta, sister-in-law of the victim-Sanjay witnessed this incident as she was standing in the varandah of her house at the relevant time. Sanjay was, then taken to his house; where the neighbours assembled and

taken him to the Government Hospital, Kankavali for medical examination and treatment.

5. The Medical Officer, Kankavali reported about the admission of the injured patient Sanjay, in the Hospital, on telephone; to the Police Station, Malvan. Upon receipt of the intimation, Police Officer from Malvan Police Station came to the hospital and recorded statement of the injured Sanjay. Accordingly, crime was registered in the Police Station, Kankavali.

6. It appears that the Officer of Police Station, Kankavali subsequently noticed that the alleged offence had taken place within the jurisdiction of Malvan Police Station as such the papers were sent to the Malvan Police Station for registration of the crime. Accordingly, Malvan Police Station registered the crime and took cognizance of the offence.

7. The investigation commenced. Statements of the witnesses were recorded. The punchanama at Exh.10 was also drawn. The search of the house of the accused-Sunil was taken. One knife like sword having 16" length was found kept of the wooden log

in the roof of the house. It was seized under Punchanama Exh.11.

8. The victim-Sanjay was shifted to K.E.M.Hospital, Mumbai in the night hours on 8th April, 1994 for further treatment. The blood stained clothes of Sanjay were also seized under Panchanama Exh.22. Blood sample of Sanjay was also taken and sent for chemical analysis. The receipts of the reports of the Chemical Analyser, Pune are at Exh.35, 36 and 37.

9. The accused was chargesheeted before the J.M.F.C., Malvan on 26th July, 1994 after completion of the investigation. The learned J.M.F.C., Malvan took cognizance of the offence and issued process against the accused under section 307 of I.P.C. He, however, found that the offence punishable under section 307 of I.P.C. was triable, exclusively, by the Court of Sessions and, accordingly, he committed the case to the Court of Sessions in usual manner on 29th March, 1995.

10. The Sessions Court (trial Court) considering the material available on record framed charge against the accused for having committed the offence

under section 307 of I.P.C. The charge was read over and explained to the accused in Marathi. He pleaded not guilty and claimed to claimed to be tried.

11. At trial, the prosecution relied on oral testimony of P.W.1 and P.W.2, who were witnesses to the Panchanama of the spot, seizure of muddemal, knife and seizure of clothes of the accused-Sunil and that of the complainant-Sanjay respectively. In addition to the above, the complainant-P.W.4, his mother-P.W.5 and the investigation officer P.W.9 were also examined by the prosecution to prove their case. The defence of the accused was that of total denial of the involvement in the crime.

12. The trial Court after having appreciated the evidence on record and noticing number of discrepancies in the evidence of the eye witnesses was pleased to acquit the respondent-accused.

13. Being aggrieved by the aforesaid judgment and order, this appeal is preferred by the State.

Submissions :
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14. The learned A.P.P. appearing for the State submits that so far as the evidence of the complainant-Sanjay (P.W.4) and that of his mother Indira (P.W.5), the prosecution's case stands proved. The eye witnesses of the incident have been wrongly and erroneously discarded by the trial Court. He submits that if this evidence is accepted, then conviction of accused under section 307 of I.P.C. must follow.

15. In order to establish the prosecution case in appeal, we were also taken through the evidence of the complainant-victim as well as that of his mother Indira, who are said to be the eye witnesses of the incident dated 7th April, 1994 including that of Panch witnesses.

Consideration :
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16. Having heard rival parties and on perusal of material on record it reveals that the prosecution case is based on Panchanama (Exh.11) under which the knife used for committing an offence was like a sword having sharp edge on one side; whereas as per the version of Digambar (Panch Witness to Exh.11),

brought on record by way of cross-examination, seizure of pen knife shown to him in the Court is reflected in the Panchanama. The description of the weapon in the Panchanama does not go hand in hand with the prosecution case. The case sought to be made out by the prosecution was that the injury was inflicted by knife having blade of 15 inches. The P.W.2, who is Panch witness for seizure of clothes, has also turned hostile, with the result, he was cross-examined by the prosecution. He also did not support the case of the prosecution.

17. If one goes through the evidence of the complainant-victim, his evidence suggests that after hearing hot exchange of words, abuses and conversation between him and accused-Sunil; his mother- Indira and sister- Vandana came to the spot of incident and then, in their presence, accused-Sunil went running to his house and brought knife having sharp edge and gave blow to Sanjay. While resisting the said attack, the sharp edge of the knife has hit left wrist of victim-Sanjay which resulted in cutting his left wrist.

18. The victim-Sanjay has further stated in his evidence that Sangeeta, daughter of Maruti Mhaskar

(his sister-in-law) had seen the incident from the varandah of her residence. The same version was repeated by India (P.W.5) in her examination-in-chief. As against this, in the cross-examination; when Indira (P.W.5) was confronted with her police statement; wherein this part of her version is absent, she could not explain as to why this version of hers is not be found in the police statement. Number of discrepancies other than this were also put to her for which she had no explanation. It is, thus, clear that there is improvement made by Indira (P.W.5) in her evidence. Even the victim-Sanjay has stated before the Police that after hearing hue and cry made by him his mother Indira and sister-in-law Sangeeta came running to the spot of the incident, whereas his evidence in the trial Court did not show presence of Sangeeta on the spot. It is, thus, creates a doubt as to the presence of Indira and/or Sangeeta when the incident had happened.

19. Sangeeta has not been examined. The sister of victim was also not examined by the prosecution to prove its case. No reasons are disclosed as to why they were not examined, if they both had witnessed the actual attack by accused-Sunil. Both

of them were the best persons to prove the prosecution case. They were not examined. It, thus, leads to an adverse inference that there evidence would have gone against them. In the circumstances, considering the variance in the prosecution story and the evidence, we are not in a position to say that the view taken by the Trial Court is not a possible and reasonable view on the evidence available on record. Having considered entire evidence before us, we are also not satisfied with the truthfulness of the witnesses. Their evidence leaves element of doubt in our mind. We find no merit in the appeal. The appeal is, thus dismissed.

(V.C.DAGA, J.) **(V.G.PALSHIKAR, J.)**